

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0402
Gross and Adjusted Gross Income Tax
Calendar Years ended 12/31/93, 12/31/94, and 12/31/95

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed because the overall audit resulted in a net refund to the taxpayer. Taxpayer states that it was audited by the IRS and no penalty was assessed. Further it believes that a penalty on a procedural issue that does not impact overall tax paid is extremely punitive to a compliant taxpayer.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer states the penalty was incorrectly assessed because an affiliate's gross income is being reduced by the same amount. To charge penalty on a procedural issue that does not impact overall tax paid is extremely punitive to a compliant taxpayer.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to pay approximately forty-four percent (44%) and fourteen percent (14%) of its tax due for calendar years 1993 and 1994, respectively, which consisted of gross income for sales made to affiliated members and various adjustments to adjusted gross income. Each year of the audit stand on its own merits and the taxpayer has not provided reasonable cause to allow a penalty waiver.

FINDING

Taxpayer's protest is denied.